

report must be submitted to OEE at the address identified in § 764.4(a) of the EAR within ninety (90) days of the first activity relating to the installed base item in Libya. A report may address more than one activity and/or more than one installed base item. An additional report must be submitted if any new material information regarding the export or reexport to Libya of the installed base item is discovered.

(2) *Licensing procedure for activities involving installed base items in Libya*—(i) *License requirement.* Any person seeking to undertake activities within the scope of § 764.2(e) of the EAR with respect to any installed base item located in Libya and not described in paragraph (b)(1)(i) of this section must obtain a license from BIS prior to engaging in any such activities. License applications should be submitted in accordance with §§ 748.1, 748.4 and 748.6 of the EAR, and should fully describe the relevant activity within the scope of § 764.2(e) of this part which is the basis of the application. License applications should include all known material facts as to how the installed base item originally was exported or reexported to Libya. This section also applies if you know that an item to be exported or reexported to a third party will be used on an installed base item not described in paragraph (b)(1)(i) of this section.

(ii) *Licensing policy.* BIS will review license applications submitted pursuant to paragraph (b)(2)(i) of this section on a case-by-case basis. Favorable consideration will be given for those applications related to civil end-uses in Libya. Applications related to military, police, intelligence, or other sensitive end-uses in Libya will be subject to a general policy of denial.

(3) *Exclusion.* The provisions of this section are not applicable to any activities within the scope of § 764.2(e) of the EAR undertaken with respect to an installed base item in Libya by a person who was party to the original illegal export or reexport of the related installed base item to Libya. Such persons should voluntarily self-disclose violations pursuant to the procedures set forth in § 764.5 of this part, which in some cases may allow activities related to unlawfully exported or reex-

ported items to be undertaken based on permission from BIS.

(4) *Relationship to other Libya license requirements.* Notwithstanding this section, a license may be required pursuant to another provision of the EAR to engage in activity involving Libya. If a license is required pursuant to another section of the EAR, and the transaction also involves activity within the scope of § 764.2(e) of this part related to an installed base item in Libya, this information should be specified on the license application. Such applications must also include all known information as to how the installed base item originally arrived in Libya. If granted, the license for the proposed transaction will also authorize the related activity within the scope of § 764.2(e) of this part.

[70 FR 14391, Mar. 22, 2005, as amended at 71 FR 51719, Aug. 31, 2006; 73 FR 49331, Aug. 21, 2008]

§ 764.8 Voluntary self-disclosures for boycott violations.

This section sets forth procedures for disclosing violations of part 760 of the EAR—Restrictive Trade Practices or Boycotts and violations of part 762—Recordkeeping—with respect to records related to part 760. In this section, these provisions are referred to collectively as the “antiboycott provisions.” This section also describes BIS’s policy regarding such disclosures.

(a) *General policy.* BIS strongly encourages disclosure to the Office of Antiboycott Compliance (OAC) if you believe that you may have violated the antiboycott provisions. Voluntary self-disclosures are a mitigating factor with respect to any enforcement action that OAC might take.

(b) *Limitations.* (1) This section does not apply to disclosures of violations relating to provisions of the EAR other than the antiboycott provisions. Section 764.5 of this part describes how to prepare disclosures of violations of the EAR other than the antiboycott provisions.

(2) The provisions of this section apply only when information is provided to OAC for its review in determining whether to take administrative action under parts 764 and 766 of the

EAR for violations of the antiboycott provisions.

(3) *Timing.* The provisions of this section apply only if OAC receives the voluntary self-disclosure as described in paragraph (c)(2) of this section before it commences an investigation or inquiry in connection with the same or substantially similar information it received from another source.

(i) *Mandatory Reports.* For purposes of this section, OAC's receipt of a report required to be filed under § 760.5 of the EAR that discloses that a person took an action prohibited by part 760 of the EAR constitutes the receipt of information from another source.

(ii) *Requests for Advice.* For purposes of this section, a violation that is revealed to OAC by a person who is seeking advice, either by telephone or e-mail, about the antiboycott provisions does not constitute the receipt of information from another source. Such revelation also does not constitute a voluntary self-disclosure or initial notification of a voluntary self-disclosure for purposes of this section.

(4) Although a voluntary self-disclosure is a mitigating factor in determining what administrative sanctions, if any, will be sought by BIS, it is a factor that is considered together with all other factors in a case. The weight given to voluntary self-disclosure is solely within the discretion of BIS, and the mitigating effect of voluntary self-disclosure may be outweighed by aggravating factors. Voluntary self-disclosure does not prevent transactions from being referred to the Department of Justice for criminal prosecution. In such a case, BIS would notify the Department of Justice of the voluntary self-disclosure, but the decision as to how to consider that factor is within the discretion of the Department of Justice.

(5) A firm will not be deemed to have made a disclosure under this section unless the individual making the disclosure did so with the full knowledge and authorization of the firm's senior management or of a person with authority to make such disclosures on behalf of the firm.

(6) The provisions of this section do not, nor should they be relied on to, create, confer, or grant any rights, ben-

efits, privileges, or protection enforceable at law or in equity by any person, business, or entity in any civil, criminal, administrative, or other matter.

(c) *Information to be provided.* (1) *General.* Any person wanting to disclose information that constitutes a voluntary self-disclosure should, in the manner outlined below, initially notify OAC as soon as possible after violations are discovered, and then conduct a thorough review of all transactions where violations of the antiboycott provisions are suspected.

(2) *Initial notification.* The initial notification must be in writing and be sent to the address in § 764.8(c)(7) of this part. The notification should include the name of the person making the disclosure and a brief description of the suspected violations. The notification should describe the general nature and extent of the violations. If the person making the disclosure subsequently completes the narrative account required by § 764.8(c)(3) of this part, the disclosure will be deemed to have been made on the date of the initial notification for purposes of § 764.8(b)(3) of this part.

(3) *Narrative account.* After the initial notification, a thorough review should be conducted of all business transactions where possible antiboycott provision violations are suspected. OAC recommends that the review cover a period of five years prior to the date of the initial notification. If your review goes back less than five years, you risk failing to discover violations that may later become the subject of an investigation. Any violations not voluntarily disclosed do not receive the same mitigation as the violations voluntarily self-disclosed under this section. However, the failure to make such disclosures will not be treated as a separate violation unless some other section of the EAR or other provision of law enforced by BIS requires disclosure. Upon completion of the review, OAC should be furnished with a narrative account that sufficiently describes the suspected violations so that their nature and gravity can be assessed. The narrative account should also describe the nature of the review conducted and measures that may have been taken to minimize the likelihood

that violations will occur in the future. The narrative account should include:

(i) The kind of violation involved, for example, the furnishing of a certificate indicating that the goods supplied did not originate in a boycotted country;

(ii) An explanation of when and how the violations occurred, including a description of activities surrounding the violations (*e.g.*, contract negotiations, sale of goods, implementation of letter of credit, bid solicitation);

(iii) The complete identities and addresses of all individuals and organizations, whether foreign or domestic, involved in the activities giving rise to the violations; and

(iv) A description of any mitigating factors.

(4) Supporting documentation.

(i) The narrative account should be accompanied by copies of documents that explain and support it, including:

(A) Copies of boycott certifications and declarations relating to the violation, or copies of documents containing prohibited language or prohibited requests for information;

(B) Other documents relating to the violation, such as letters, facsimiles, telexes and other evidence of written or oral communications, negotiations, internal memoranda, purchase orders, invoices, bid requests, letters of credit and brochures;

(ii) Any relevant documents not attached to the narrative account must be retained by the person making the disclosure until the latest of the following: the documents are supplied to OAC; BIS informs the disclosing party that it will take no action; BIS issues a warning letter for the violation; BIS issues an order that constitutes the final agency action in the matter and all avenues for appeal are exhausted; or the documents are no longer required to be kept under part 762 of the EAR.

(5) *Certification.* A certification must be submitted stating that all of the representations made in connection with the voluntary self-disclosure are true and correct to the best of that person's knowledge and belief. Certifications made by a corporation or other organization should be signed by an official of the corporation or other organization with the authority to do so. Section 764.2(g) of this part relating to

false or misleading representations applies in connection with the disclosure of information under this section.

(6) *Oral presentations.* OAC believes that oral presentations are generally not necessary to augment the written narrative account and supporting documentation. If the person making the disclosure believes otherwise, a request for a meeting should be included with the disclosure.

(7) *Where to make voluntary self-disclosures.* The information constituting a voluntary self-disclosure or any other correspondence pertaining to a voluntary self-disclosure should be submitted to: Office of Antiboycott Compliance, 14th and Pennsylvania Ave., NW., Room 6098, Washington, DC 20230, tel: (202) 482-2381, facsimile: (202) 482-0913.

(d) *Action by the Office of Antiboycott Compliance.* After OAC has been provided with the required narrative and supporting documentation, it will acknowledge the disclosure by letter, provide the person making the disclosure with a point of contact, and take whatever additional action, including further investigation, it deems appropriate. As quickly as the facts and circumstances of a given case permit, BIS may take any of the following actions:

(1) Inform the person making the disclosure that, based on the facts disclosed, it plans to take no action;

(2) Issue a warning letter;

(3) Issue a proposed charging letter and attempt to settle the matter pursuant to § 766.18 of the EAR;

(4) Issue a charging letter pursuant to § 766.3 of the EAR if a settlement is not reached or BIS otherwise deems appropriate; and/or

(5) Refer the matter to the Department of Justice for criminal prosecution.

(e) *Criteria.* supplement No. 2 to part 766 of the EAR describes how BIS typically exercises its discretion regarding whether to pursue an antiboycott administrative enforcement case under part 766 and what administrative sanctions to seek in settling such a case.

[72 FR 39004, July 17, 2007]